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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,888	08/06/2001	Wolfgang Biesel	2565/89	9046

26646 7590 03/18/2003

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EXAMINER

KIM, SUN U

ART UNIT PAPER NUMBER

1723

DATE MAILED: 03/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/922,888

Applicant(s)

Biesel

Examiner

John Kim

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 6, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-25 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-13, 16, 17, and 19-25 is/are rejected.
- 7) ☒ Claim(s) 14, 15, and 18 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Aug 6, 2001 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.

- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☒ Certified copies of the priority documents have been received in Application No. 09/235,964 application from the International Bureau (PCT Rule 17.2(a)).

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 1723

1. Claim 19 is objected to because of the following informalities: Recitation of "selected from the group consisting of" should be followed by "and" instead of "or". Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11-12, 16-17 and 19-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11-12 and 19-22 are indefinite for failing to particularly point out the structural elements of a diluting device. Recitation of "constructed and arranged" in claim 11-12 and 21-22 do not show the structural elements. Claims 16-17 and 25 do not show the structural element which concentrates red blood cells to the claimed hematocrit. Recitation of "the annular channel" in claim 23 lacks positive antecedent basis.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 1723

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-13 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,187,979 (hereinafter referred to as Cullis et al). Cullis et al teach a blood centrifugation device comprising a centrifuge (13) having a separation bag (21) comprising an inlet (38), a waste line (40) and a concentrated cell outlet line (36) and a diluting device (90, 96) for diluting concentrated cells with physiologic solution wherein solution line (74) has a solution pump (78) (see figure 1; col. 4, line 58 - col. 8, line 23).
7. Claims 11-12 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,655,123 (hereinafter referred to as Judson et al). Judson et al teach a blood centrifugation device comprising a centrifuge (52) having an inlet, a waste line and a concentrated cell outlet line (36) and a diluting device (72, 76) for diluting concentrated cells with physiologic solution e.g. plasma (see figure 1; col. 7, line 29 - col. 10, line 57).
8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cullis et al. Claim 19 essentially differs from the apparatus of Cullis et al in reciting that the separation unit has a shape selected from the group consisting of a ring or a spiral. It would have been an obvious matter of design choice to modify the separation unit in a shape of ring or spiral, since applicant has not disclosed that the separation unit in a shape of ring or spiral solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any other shape such as square or diamond.

Art Unit: 1723

9. Claim 14-15 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 23-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

11. Claims 16-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References in PTO-892 form are cited in the parent application no. 09/235,964.

Additional U.S. Patent No. 4,416,654 and 5,234,403 and 5,419,759 and 5,971,948 and 5,147,290  
teach blood centrifugation apparatus.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kim whose telephone number is (703) 308-2350. The examiner can normally be reached on weekdays from 7:00 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached on (703) 308-0457. The fax phone number for official response after final action is (703) 872-9311, and the fax phone number for all other official faxes is (703) 872-9310.


Application Number: 09/922888

Page 5

Art Unit: 1723

When sending a draft amendment by fax, please mark the paper as "DRAFT"; otherwise, mark the paper "OFFICIAL". This will expedite the processing of the paper.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

  
John Kim  
Primary Examiner  
Art Unit 1723

J. Kim  
March 10, 2003

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